IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 112 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BHATHISINH TAKHATSINH CHAUHAN

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Revision Application No. 112 of 2003

MR PS CHAMPANERI for Petitioner

Ms N V Joshi, APP for Respondent

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 15/03/2003

ORAL JUDGEMENT

This is a revision application under section 397 read with section 401 of the Code of Criminal Procedure,

1973 for setting aside the judgment and conviction order dated 26.2.2003 recorded by the learned Addl.Sessions Judge, Sabarkantha, Camp at Modasa in Criminal Appeal No.27/2001 confirming the judgment and conviction order dated 31.5.2001 recorded by the learned Judicial Magistrate First Class, Camp at Bayad in criminal case No.427/99 under which the learned Magistrate convicted the present petitioner for offence punishable under section 279, 337, 304-A of IPC and under sections 117, 184 and 134 of the Motor Vehicles Act and sentenced the present petitioner to suffer S.I. for six months and to pay a fine of Rs.250/-. In default of payment of fine to further undergo S.I. for 15 days for offence punishable under section 279 of IPC. The petitioner was directed to suffer S.I. for six months and to pay fine of Rs.250 and in default of payment of fine, to further undergo S.I. for 15 days for offence under section 337 of IPC. The petitioner will further directed to suffer S.I. for two years and to pay fine of Rs.500/- and in default of payment of fine, to further undergo S.I. for one month for offence punishable under section 304 -A of IPC.

2. The petitioner was directed to pay Rs.100/- for offence punishable under section 134 of the IPC and no separate sentence was inflicted for offences punishable under sections 177 and 184 of the Motor Vehicles Act. The substantive sentence was ordered to be run concurrently. The facts of the prosecution case before the trial court may be briefly stated as follows:

3. That on 10.5.1999 at about 23.00 hours the petitioner was driving his truck bearing No. GJ-1-UU 5591 on a public road between Lalpur and Amarghat. Truck No.GJ-9-H5370 was going ahead of the said truck. The prosecution alleged that the petitioner was driving his truck so rashly or negligently as to endanger human life and personal safety of others and by and on account of such rash act of driving, the said truck dashed the rear part of the said tractor. With the result Mohabatsingh Sabursingh who was in the said tractor sustained grievous hurt and died on account of injuries received in the said accident. Even the tractor driver Balwantsingh also sustained injuries. Investigation was carried out, charge sheet was also filed for the aforesaid offence. The petitioner was tried for the said offence and at the end of the trial, the learned Magistrate inflicted the aforesaid punishment on the petitioner. The petitioner preferred the aforesaid criminal appeal unsuccessfully and hence revision application.

4. It has been mainly contended here by Mr P S

Champaneri, learned Advocate for the petitioner-original accused person that the tractor was in the process of going on the main road from the side way and, therefore, the driver of the said tractor was negligent in driving the vehicle on a public road. The question of negligence of the driver of the truck is not required to be considered for the purpose of deciding the present revision application since the contributing negligence is not required to be considered in a criminal case.

5. It is also his argument that the facts of the case on record clearly show that there was no negligence on the part of the present petitioner. The fact remains that the tractor as well as the trailer attached to the said tractor both have sustained damage which clearly shows that even if the tractor and the trailor were was coming on the main road from the side road, the tractor as well as the trailer both had already come on the main road. Otherwise, the trailer of the tractor would have been damaged.

6. It is also contended that the damage to the two vehicles shows that the left hand side of the front part of the truck and right hand side of the rear part of the trailer collided with one another which shows that there was no negligence on the part of the petitioner. On the contrary, this act of the petitioner shows that the petitioner tried to overtake the said ongoing tractor and trailer and in the process, left hand side of the front portion of the truck dashed against the rear right portion of the tractor and the trailer. The petitioner ought to have stopped his vehicle if he did not have sufficient space to overtake the ongoing vehicle. The petitioner does not appear to have taken that much precaution for overtaking the ongoing vehicle. It is also on record that after the said collision, the tractor and the trailor left the road and were thrown in a canal by the side of the road. Same way, even the truck also left the road and dashed against a road side tree. This shows that the truck was being driven not only negligently and rashly but it was driven with a very high speed and the petitioner was unable to control the speed. In fact the learned Advocate for the petitioner read out to me the relevant portion from the evidence of the tractor driver as well as panchnama which clearly shows that but for the negligence of the petitioner, the accident could not have taken place.

7. It is also contended that the petitioner was not proved to be driving the truck at the relevant point of time. On the contrary the tractor driver Balwantsingh

has clearly deposed that he was in a position to identify the petitioner as driver of the truck on account of the light which he had focussed on the face of the petitioner. In above view of the matter, it is not possible to agree with the argument of the petitioner that the petitioner was not proved to be the driver of the truck in question. Considering the record and considering the factual circumstance, it cannot be said that the trial court as well as the Sessions court have committed any error in appreciation of the evidence on record. In that view of the matter, when there was sufficient material before the two courts below to hold the petitioner guilty for the offence as aforesaid, there is no reason for this court to interfere the said finding of fact of the two courts below. With respect to the quantum of punishment, it has been contended that the petitioner has been directed to suffer S.I. for two years. It is true that maximum punishment has been awarded for offence under section 304-A of IPC. It is also required to be seen that the road accidents have been increased to a great extent. Unless deterrent punishments are awarded to the accused against whom the offences are proved, it would be very difficult to curb such accidents. It is also required to be seen that in such accidents, people lose their lives, sometimes they lose their limbs. Any way, it cannot be said that the punishment is on higher side. In that view of the matter, there is no merit in the present revision and, therefore, this revision application is dismissed at admission stage.

15.3.2003 [D P Buch, J.]
msp